

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION AT AKRON

IN RE:) CASE NO. 09-53985
DENNIS C. McCLUSKEY)
Debtor) IN PROCEEDINGS UNDER CHAPTER 7
) JUDGE MARILYN SHEA-STONUM
)
) AMENDED
) MOTION OF THE DEBTOR AND
) TRUSTEE FOR AUTHORITY TO
) MAKE DISTRIBUTION OF FUNDS
) IN POSSESSION OF TRUSTEE

Now comes the debtor, Dennis C. McCluskey, and the trustee, Marc P. Gertz, and hereby move the court for an order authorizing and empowering the trustee to pay certain priority claims held by the United States of America Internal Revenue Service, the State of Ohio Department of Taxation, and the City of Akron, and, for cause, states as follows:

1. The debtor, Dennis C. McCluskey, did file his petition seeking relief under Chapter 7 of the United States Bankruptcy Code on the 3rd day of September, 2009.
2. That various claims have been filed in the Chapter 7 proceeding, including a claim of Patricia McCluskey in the amount of \$70,000, a claim of the United States of America Internal Revenue Service in the amount of \$137,804.63 of which \$123,165.28 is asserted to be a priority claim, a claim of the State of Ohio Department of Taxation in the amount of \$45,177.73, all of which is asserted to be entitled to priority status but which includes \$878.40 for the tax year 2008, \$2,241.43 for the tax year 2007, and \$5,022.89 for the tax year 2006 which appear to be penalties and the debtor and the trustee do not believe are entitled to priority, and a claim of the City of Akron for \$13,449.81 of which it is asserted \$12,125.99 is entitled to priority.
3. The claim of Patricia McCluskey has been withdrawn and is no longer asserted as a priority claim in this estate.
4. Pursuant to an order authorizing compromise and settlement of a dispute entered September 14, 2011, the debtor has made payments of \$4,000 per month to the trustee and the trustee

presently has in his possession the sum of \$68,000. This motion, if granted, will not affect or modify the obligations of the debtor set forth in said order.

5. The IRS has expressed the intention to commence collection activities against the debtor and Patricia McCluskey.

6. If initiated, such collection efforts would impair and impede, if not prevent, the performance by the debtor of his compromise obligations. Such actions would further impact certain court orders involving his former spouse and adversely affect her interest as well.

7. That, at the present time, the maximum compensation payable to the trustee for services performed to date are approximately \$6,600. Each additional \$4,000 per month payment would entitle the trustee to a potential additional sum of \$200.

8. It is not anticipated that there will be any other substantial administrative claims.

9. The total amount of the claims presently pending and entitled to priority is \$172,326.28 of which the Internal Revenue Service claim constitutes approximately 71%, the State of Ohio Department of Taxation claim approximately 21%, and the City of Akron claim approximately 7%.

10. If \$60,000 were distributed pro rata by the trustee, \$8,000 would remain in the possession of the trustee for payment of his and others administrative claims, \$42,600 would be distributed to the Internal Revenue Service, \$12,600 to the State of Ohio, and \$4,200 to the City of Akron and, if distributions were made of the monthly installments, after deduction of an additional amount of \$200 per month for maximum trustee compensation, an additional sum of \$2,698 could be paid monthly to the Internal Revenue Service, \$798 per month to the State of Ohio Department of Taxation, and \$266 per month to the City of Akron.

11. This would reduce the accrual of interest upon these claims, which appear to be non-dischargeable debts, and would further reduce the costs of administration by reducing the amounts paid for the holding of these funds by the trustee.

WHEREFORE, the debtor and the trustee pray that this court enter its order authorizing and empowering the trustee to make a distribution, pro rata, to the United States of America Internal Revenue Service, the State of Ohio Department of Taxation, and the City of Akron upon such portions of their claims as are entitled to priority of \$60,000 and that he be further authorized and empowered to make distributions of an additional sum of \$3,800 per month, prorated among said priority claimants, provided he has received payment from the debtor as required under the terms of the compromise order, and for such other and further relief as is just and proper.

GIBSON & LOWRY

/s/ Michael J. Moran

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CERTIFICATE OF SERVICE

I certify that on February 27, 2013, a true and correct copy of the Motion of the Debtor and Trustee for Authority to Make Distribution of Funds in Possession of the Trustee was served:

Via the Court's Electronic Case Filing System on these entities and individuals who are listed on the Court's Electronic Mail Notice List:

Elizabeth Alphin, on behalf of Kia Motor Finance Company, loubknotices@mapother-atty.com

Patti H. Bass, on behalf of HSBC Bank, Nevada, N.A., ecf@bass-associates.com

Kathryn A. Belfance, kb@rlbllp.com

Anthony J. Cespedes, on behalf of State of Ohio Attorney General's Office, ajc1253@yahoo.com

Marc P. Gertz, Trustee, debm@goldman-rosen.com

Milan Kubat, on behalf of The Huntington National Bank, bronationalecf@weltman.com

Morris H. Laatsch, on behalf of Patricia McCluskey, jwander@kzdylaw.com

Mark R. Lembright, on behalf of Huntington National Bank, mlembright@feltyandlembright.com

Christopher J. Niekamp, on behalf of Huntington National Bank, cjn@b-wlaw.com

Beth Ann Schenz, on behalf of KeyBank National Association, bkecf@huntington.com

United States Trustee

Gilbert B. Weisman, on behalf of American Express Centurion Bank, notices@becket-lee.com

Ronna Jackson, United States Trustee, ronna.g.jackson@usdoj.gov

And by regular U.S. mail, postage prepaid, on:

Ohio Department of Taxation
Attn: Bankruptcy Division
P.O. Box 530
Columbus, OH 43216

City of Akron
Department of Taxation
One Cascade Plaza
Akron, OH 44308

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

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